



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 29, 1994

Mr. Raymond A. Cowley
Law Offices of Jarvis & Kittleman
P.O. Box 1416
McAllen, Texas 78505-1416

OR94-137

Dear Mr. Cowley:

On behalf of the Tropical Texas Center for Mental Health and Mental Retardation (the "center"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24866.

The center has received a request for "any and all contracts that the Center (or a department or affiliate of same) has entered into with Dr. L.R. Pelly." You have submitted several documents for our review and contend that sections 552.101 and 552.102 of the Government Code except the requested information from required public disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld if

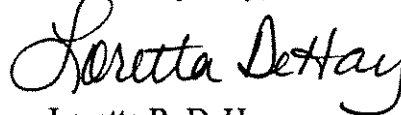
- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and
- (2) the information is not of legitimate concern to the public.

Industrial Found. v. Texas Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Normally, section 552.102 may be invoked only when

information reveals intimate details of a highly personal nature. Open Records Decision Nos. 397, 359 (1983). We have examined the information you have submitted for our review and conclude that common-law privacy does not prohibit its release.¹ Therefore, except as noted below, you must disclose the information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/rho

Ref.: ID# 24866

Enclosures: Open Records Decision No. 622 (1994)
Submitted documents

cc: Mr. Brian G. Janis
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100 North Expressway 83
Brownsville, Texas 78521-2257

Honorable Rene O. Oliveira
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

¹Although you have not raised this issue, we note that the information you have submitted contains a social security number. See Open Records Decision No. 325 (1982) (attorney general will raise confidentiality exceptions where governmental body fails to do so). A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994) (copy enclosed); *see also* 42 U.S.C. § 405(c)(2)(C)(v) (governing release of social security number collected in connection with the administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security number at issue is confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the center should ensure that the information is not confidential under this federal statute.